

Mail No. 591701

Date mailed : September 8, 2009

(translation)

DECISION OF REFUSAL

Patent application No. 2006-505653

Date of Draft: September 2, 2009

Examiner in charge: Ryusuke MORI

Title of the Invention: ANALYSIS AND CULTURE APPARATUS

Applicant: Chip-Man Technologies Oy

Attorney: Keiichiro Saikyo et al.

This patent application should be refused for the Reason(s) stated in the Notification of Reason for Refusal dated on January 30, 2009 (mailed on February 3, 2009).

The Argument and the Amendment have been examined, and no basis sufficient to overcome the previously given reason(s) for refusal has been found.

Remarks:

A) By the Amendment, the invention was so limited that a cap is transparent in the depth direction of a well.

When this amendment is considered, the cited reference 2 (International Publication No. WO02/025289) describes that, in the case of performing a PCR reaction (nucleic-acid amplification) in the well, a well receptacle or cover is formed of a material with high optical transparency to know

reaction results by detecting fluorescent light, and thus, it is well-known art (cf. a specification, page 1, bottom line-page 2, line 1 and page 12, lines 7-12).

Accordingly, since the cited reference 1 (International Publication No. WO 02/072423) presented in the Notification of Reason for Refusal describes in lines 21-32 on page 12 of the specification that the PCR reaction is performed in a well sealed with a lid, a person skilled in the art could have easily arrived at forming the lid (a single well-interface protrusion 20, or a whole body of a single well-interface protrusion 20 and a supporting portion thereof, microfilm lid 12) of transparent materials.

B) In the Argument, the applicant argues that the protrusions in the cited reference 1 do not perform the function of independent caps.

In the Notification of Reason for Refusal, it was pointed out that the cited reference 1 describes "the protrusion (the cap) is not needed to be provided to all the wells which are provided to the microplate but can be provided to only necessary wells, the microplate lid does not need to cover the entire microplate and FIG. 9 shows an example of a microplate lid 98 that interfaces with only two centrally located rows 101 and 102 of the microplate

10."

In view of the above discussion, it can be said that, in the invention described in the cited reference 1, a person skilled in the art could have easily arrived at the adoption of a microplate lid 98 interfacing with only one row of a plurality of rows of the microplate 10, the adoption of a microplate lid 98 interfacing with only two wells of a plurality of wells of the microplate 10 or the adoption of a microplate lid 98 interfacing with only one well of a plurality of wells of the microplate 10. Thus, it can be said that the invention according to claim 1 of the present application merely selected the said last aspect.

C) Further, it is deemed that a person skilled in the art could have easily made the inventions according to amended claims 2 to 10, on the basis of the inventions disclosed in the cited reference 1 and well-known art.

The applicant who is dissatisfied with this Examiner's decision may make a request for an appeal trial to the Commissioner of the Japan Patent Office within three months (in case that the applicant is a resident abroad, within four months) from the transmittal of the Examiner's decision (Japanese Patent Law §121(1)).

(Teaching in compliance with Administrative Case

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Litigation Law §46(2))

A suit may be filed only against an appeal decision in the request for the appeal trial against the Examiner's decision (Japanese Patent Law §178(6)).

I hereby certify that matters described above are identical with those recorded on the file.

Date of Certification: September 3, 2009

Makoto YOSHIKOSHI
Administrator
Ministry of Economy,
Trade and Industry